STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 13, 2011
v	No. 300171 Wayne Circuit Court
RODERICK LOUIS PIPPEN, Defendant-Appellee.	LC No. 10-006891-FC

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals as of right the circuit court's orders granting defendant's motion to quash the information and dismissing all charges. Because the evidence presented at the preliminary examination established probable cause to believe that defendant committed the crimes charged, we reverse and remand for further proceedings.

Following a preliminary examination, the district court bound defendant over for trial on the charges of first-degree felony murder, MCL 750.316(1)(b), possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. In the circuit court, defendant filed a motion to quash the information, which the court granted and dismissed the charges. The prosecution argues that the circuit court erred by granting the motion to quash and dismissing the charges because the district court did not abuse its discretion in finding that probable cause existed to bind defendant over for trial.

We review for an abuse of discretion a district court's determination whether the evidence was sufficient to support a defendant's bindover. *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). We also review for an abuse of discretion a circuit court's decision on a motion to quash an information. *People v Fletcher*, 260 Mich App 531, 551-552; 679 NW2d 127 (2004). A court abuses its discretion "when its decision falls 'outside the range of principled outcomes.'" *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010), citing *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008).

If the district court determines that a felony has been committed and there is probable cause to believe that the defendant committed it, the court must bind the defendant over for trial. MCL 766.13; *People v Yost*, 468 Mich 122, 125-126; 659 NW2d 604 (2003). Probable cause exists when there is evidence "'sufficient to cause a person of ordinary prudence and caution to

conscientiously entertain a reasonable belief' of the accused's guilt." *Yost*, 468 Mich at 126, citing *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997).

Here, there is no dispute that a felony occurred. On July 21, 2008, a tall, thin, black man approached the driver's side window of a car parked on Roxbury Street and ordered the occupants to "get the f . . . out the car." The man then shot Brandon Sheffield, who sat in the driver's seat, in the head, killing him. At issue is whether there was probable cause to believe that defendant committed the shooting. In finding that the evidence was sufficient to establish probable cause, the district court relied on the testimony of Sean McDuffie, a friend of defendant, and Camay Larry, an acquaintance of Sheffield, along with firearm evidence.

Larry was present at the scene when the shooting occurred. She testified that in the early morning hours of July 21, 2008, she was standing near the driver's side window of Sheffield's car, which was parked on Roxbury, approximately two blocks from Houston-Whittier. A car "rolled" by and a man with something white covering his face stuck his head out of the window and stared at her. She then got into the car and sat behind Sheffield, who sat in the driver's seat. Five minutes later, a man with something white covering his face approached the driver's side window of Sheffield's car, told the occupants to "get the f . . . out," and shot Sheffield in the head. Just before the shooting, Kyra and Adam, other passengers in Sheffield's car, got out of the vehicle.

McDuffie testified that at some point during the summer of 2008, he saw defendant shoot someone in the Houston-Whittier area. McDuffie was in a car with defendant when they passed by the victim's vehicle, and then circled back around to the vehicle at defendant's request. Defendant then got out of the car, walked up to the driver's side window, shot the driver in the head with a "Glock nine," and returned to the car. After the shooting, McDuffie saw people running.

The similarities between Larry's and McDuffie's accounts of the incident support the conclusion that they witnessed the same shooting – the July 21, 2008, shooting of Sheffield. Both Larry and McDuffie described a shooting that occurred in the summer of 2008, near Houston-Whittier in Detroit, in which the shooter walked up to a parked car and shot the man in the driver's seat in the head. Larry testified that Kyra and Adam got out of the car just before the shooting, and McDuffie saw people running after the shooting.

In addition, evidence regarding the firearm implicated defendant as the shooter. McDuffie testified that the gun that defendant used was a "Glock nine." Immediately before the police apprehended defendant, approximately three months after the shooting, defendant removed a nine millimeter Glock firearm from his waistband and dropped it to the ground. Ballistics testing revealed that a shell casing recovered from Sheffield's car was shot from the same weapon.

In support of his argument that the evidence was insufficient to support his bindover, defendant relies on several inconsistencies between Larry's and McDuffie's descriptions of the shooting. For example, Larry testified that the shooting took place at approximately 2:00 a.m., while McDuffie claimed that it occurred at approximately 10:00 p.m. Moreover, McDuffie maintained that defendant was not wearing anything on his face, but Larry testified that

something white covered most of the shooter's face. Larry also testified that immediately after she heard the gunshot, the car began moving, and the police found the vehicle on the grass with its front end against a tree. McDuffie, on the other hand, maintained that the car did not move after defendant shot the driver. Finally, when the police showed McDuffie pictures of the crime scene, he asserted that it did not look like the same place where he had witnessed defendant shoot someone.

Defendant's reliance on these inconsistencies is unavailing. If the evidence "both supports and negates an inference that the defendant committed the crime charged," then it gives rise to a factual question for the trier of fact to decide at trial. *People v Northey*, 231 Mich App 568, 576; 591 NW2d 227 (1998). Thus, the inconsistencies did not preclude a determination that probable cause was established. Probable cause requires only that a person of ordinary prudence and caution entertain a reasonable belief that the defendant committed the crime. *Yost*, 468 Mich at 126. Here, a person could reasonably conclude that Larry and McDuffie were describing the same shooting. Given the similarities between the two versions of the shooting and the firearm evidence, the district court's probable cause determination was not "outside the range of principled outcomes," and thus did not constitute an abuse of discretion. See *Feezel*, 486 Mich at 192.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Pat M. Donofrio